



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF  
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April 17, 2003

Bruce P. Beausejour, Esq.  
Verizon  
185 Franklin St., 13<sup>th</sup> Floor  
Boston, MA 02110

RE: Verizon Petition for a Waiver of Certain Service Results Measured Under the  
Performance Assurance Plan - D.T.E. 03-38.  
Letter Order on May 2003 Reports

Dear Mr. Beausejour:

On March 18, 2003, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon") filed with the Department of Telecommunications and Energy ("Department") a Petition for a Waiver of Certain Service Results Measured Under the Performance Assurance Plan ("PAP") for January 2003 ("Petition"). In its Petition, Verizon asks the Department to waive certain service performance results for January 2003 that would otherwise be included in the calculation of monthly bill credits due to Competitive Local Exchange Carriers ("CLECs") under provisions of the PAP. Verizon estimates that if the Petition were granted, the amount of monthly credits due to CLECs will be eliminated (the filed credits were approximately \$164,000). The Department requested comments on the Petition. The Department received comments from AT&T Communications of New England, Inc. ("AT&T"), WorldCom, Inc., and NCI Telecom, and reply comments from Verizon.

Under the PAP, Verizon is subject to financial penalties for substandard service quality. The PAP allows Verizon to file a waiver petition seeking to have the monthly service quality results modified on three generic grounds. PAP at Section II(J) (pages 21-23), and Appendix D. The third ground, applicable here, relates to situations beyond Verizon's control that negatively affect its ability to satisfy only those measures with absolute standards. Id. The

PAP states that any petition pursuant to this provision must demonstrate clearly and convincingly the extraordinary nature of the circumstances involved, the impact that the circumstances had on Verizon's service quality, why Verizon's normal reasonable preparations for difficult situations proved inadequate, and the specific days affected by the event. Id.

According to Verizon, certain systems employed by Verizon were subject to an Internet computer attack by a "worm" ("the Slammer Worm") during the weekend of January 25, 2003 (Petition at 1). Verizon states that in response to the attack, Verizon closed its wholesale interfaces in order to speed isolation and recovery from the infection, directly affecting the performance measures for OSS Interface Availability (id. at 4). Verizon argues that but for the Slammer Worm, Verizon would have been able to provide satisfactory service on these measures (id. at 13). Verizon asserts that the Slammer Worm is a waivable event beyond its control, and that the Department should allow Verizon to exclude January 25, 2003 from the calculation of the affected metrics for the January performance month (id. at 14).

The Petition requests that the Department issue a ruling on the Petition by April 18, 2003 in order to meet the May 1, 2003 due date for processing of January 2003 credits. In the event that the Department is unable to issue a ruling by that date, the Department requested comments on how the Department should treat the May 2003 filing. Specifically, should the Department require Verizon to (1) hold the May 2003 results pending Department ruling on the Petition; (2) file the May 2003 results assuming the Petition is not granted, with a true-up after the Department rules; (3) file the May 2003 results assuming the Petition is granted and exclude the affected data, with a true-up after the Department rules, or (4) file the May 2003 results assuming the Petition is granted and adjust the affected data using a normalization methodology, with a true-up after the Department rules. In its Reply Comments, Verizon offers an additional option. Verizon recommends that it file the May 2003 Reports as if the Petition is not granted, but that the Department stay Verizon's obligation to process the related credits pending the Department's decision on the Petition (Verizon Reply Comments at 6). Verizon argues that if the Department denies the Petition, Verizon will issue the credits and include interest thereon (id.).

The only CLEC to comment on this point is AT&T. AT&T recommends that the Department require Verizon to file the May 2003 PAP results assuming the Petition is not granted, subject to true-up in the event that the Department grants Verizon's Petition (AT&T Comments at 13-14). According to AT&T, the FCC expressed a concern that waiver petitions not delay bill credits for poor performance (id.).<sup>1</sup> In addition, AT&T argues that the FCC relied on the New York Public Service Commission's expressed willingness to resolve waiver petitions prior to the scheduled payment date (which in this case is May 2003) (id.).

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<sup>1</sup> Citing In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York, CC Docket No. 99-285, Memorandum Opinion and Order, FCC 99-404, at ¶ 441 n.1357 (released December 22, 1999) ("New York Order").

The Department directs Verizon to file the May 2003 Reports assuming the Department does not grant its waiver request. Verizon shall process the bill credits due to CLECs based on the actual January 2003 results. The Federal Communications Commission (“FCC”) directly addressed whether a waiver request should be allowed to “stay” bill credits. The FCC’s Order granting Verizon Section 271 authority in New York specifically states that bill credits for poor performance should never be stayed by a waiver petition.<sup>2</sup> Therefore, Verizon’s request is inconsistent with the FCC’s prior pronouncement on this issue. In addition, Verizon does not contend that it will suffer harm if it is required to apply the bill credits pending a determination on its waiver petition.

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<sup>2</sup> The FCC stated in reference to New York’s waiver process, “[w]e understand this to mean that waiver petitions will be resolved expeditiously, such that bill credits due for poor performance in a given month will never be ‘stayed’ by a waiver petition.” New York Order at ¶ 441 n.1357.

Accordingly, Verizon is required to process bill credits for January 2003 service including the actual results for January 25, 2003. The bill credits are subject to true-up, if necessary, after the Department decides on its Petition.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Paul B. Vasington, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Eugene J. Sullivan, Jr., Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Deirdre K. Manning, Commissioner

cc. Mary Cottrell, Secretary  
Paul G. Afonso, General Counsel  
Michael Isenberg, Director, Telecommunications Division  
Staff as Assigned